

OPINION
48-81

February 3, 1948 (OPINION)

COURT REPORTERS

RE: May Make no Charge for Typing Memorandum Opinion of Court

This will acknowledge your letter of January 31 in which you enclose correspondence between yourself and one of the court reporters of one of the district judges in the judicial district in which Bowman County is located. I note that in a certain civil case this court reporter has submitted a bill for services in transcribing and typing the memorandum opinion of the court in this case. This bill was duly approved by the district court which decided the case.

The question arises whether under the statutes a court reporter is entitled to receive pay for the transcribing and typing of the memorandum opinion of a district judge involving the decision of a civil case.

Section 27-0601 of the 1943 Revised Code provides that each judge of the district court in each judicial district, when in his judgment it will expedite the public business, may appoint a competent person to the office of court reporter within his district. The order of the appointment is filed with the clerk and entered upon the records of the court in each county of the district. The reporter subscribes the oath required for civil officers and files the same in the office of the Secretary of State. He holds his office and discharges his duties until the order for his appointment is revoked or until another person is appointed.

Although this statute does not state that the court reporter is the personal secretary of the district judge who appoints him, yet that must be implied. He is appointed by the district court in order to facilitate and expedite the public business of the court and his appointment is only for such time as the district judge may determine and the court may revoke his appointment whenever it sees fit.

The salary of the court reporter is set forth in section 27-0602 as amended by chapter 231 of the 1947 Session Laws.

The duties of a court reporter are set forth in section 27-0603 of the 1943 Revised Code. They are mandatory duties, but it must be presumed that in addition to these mandatory duties prescribed by the statute, the court reporter performs such other services as the court may require to expedite the public business.

In civil and criminal actions section 27-0605 of the 1943 Revised Code, the court reporter, when requested, shall prepare a transcript of the original shorthand minutes of such action upon payment of the fees provided by law. A transcript of the original shorthand minutes of a criminal action shall be prepared whenever the court orders a transcript be made at the expense of the county. The fees for transcripts are set forth in section 27-0608, and in view of the fact that this is the only section setting forth the fees of a court

reporter beyond his regular salary, it must be presumed that all acts performed by him except those for which he may charge special fees as prescribed for transcripts, (see section 29-2132), that he perform these incident to his employment and the work designated for him by the court.

If in the course of the court business the judge deems it convenient for him and to expedite the public business, to reduce his decision to a memorandum opinion, it is within the authority of the court to ask the court reporter to do that work, and if he does do it, there is no statute that would authorize a charge for the same. Furthermore, such services performed for the court would be in the nature of services incident to the reporter's regular employment by the court and not within the statutes authorizing specific charges therefor which are above and beyond the regular salary of the reporter.

It seems to us that the fact that the district judge appoints the court reporter and has the authority to revoke such appointment any time that he sees fit, it must be implied that such reporter is amenable to the orders of the court, and must perform any and all services for the court that the court may request of such reporter, and that the specific duties enjoined upon the court reporter by section 27-0603 are not the only duties which the reporter must perform.

It is, therefore, the opinion of this office that this bill for the transcript and typing of the memorandum opinion in question is not payable by Bowman County and that there is no authority upon which to base a request for payment of same.

NELS G. JOHNSON

Attorney General